No. 14-9496

IN THE

# Supreme Court of the United States

ELIJAH MANUEL,

*Petitioner,*

v.

CITY OF JOLIET ET AL.,

*Respondents.*

On Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

## BRIEF FOR PETITIONER


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## QUESTION PRESENTED

Whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.

# TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

TABLE OF AUTHORITIES ..... iv

BRIEF FOR PETITIONER ..... 1

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS ..... 1

STATEMENT OF THE CASE ..... 2

A. Factual Background ..... 2

B. Procedural and Legal Background ..... 6

SUMMARY OF ARGUMENT ..... 10

ARGUMENT ..... 13

I. The Fourth Amendment Governs Malicious Prosecution Claims Involving Pretrial Detentions Without Probable Cause ..... 13

A. Claims Grounded in Pretrial Detention Without Probable Cause Should Be Analyzed Under the Fourth Amendment ..... 13

B. The Fourth Amendment Prohibits Pretrial Detention Without Probable Cause After Legal Process Has Commenced ..... 16

II. The Due Process Clause Is Irrelevant to Manuel's Malicious Prosecution Claim ..... 26

III. Manuel's Fourth Amendment Malicious Prosecution Claim Is Cognizable Under Section 1983 ..... 31

A. Manuel's Claim May Proceed Under Section 1983 Regardless of Whether State Law Provides a Remedy for Malicious Prosecution ..... 32

B. Allowing This Suit to Proceed Fulfills the Core Purposes of Section 1983 ..... 33

CONCLUSION ..... 36

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

*Albright v. Oliver*,
510 U.S. 266 (1994) ..... *passim*

*Bearden v. Georgia*,
461 U.S. 660 (1983) ..... 26

*Briscoe v. LaHue*,
460 U.S. 325 (1983) ..... 7

*Burns v. Reed*,
500 U.S. 478 (1991) ..... 17

*Cafeteria Workers v. McElroy*,
367 U.S. 886 (1961) ..... 30

*California v. Hodari D.*,
499 U.S. 621 (1991) ..... 22, 23

*Carey v. Piphus*,
435 U.S. 247 (1978) ..... 33, 35

*Castellano v. Fragozo*,
352 F.3d 939 (5th Cir. 2003) ..... 8, 13, 33

*Collins v. Harker Heights*,
503 U.S. 115 (1992) ..... 30

*County of Riverside v. McLaughlin*,
500 U.S. 44 (1991) ..... 17, 22

*Franks v. Delaware*,
438 U.S. 154 (1978) ..... 17, 19

*Galbraith v. County of Santa Clara*,
307 F.3d 1119 (9th Cir. 2002) ..... 8

*Gallo v. City of Philadelphia*,
161 F.3d 217 (3d Cir. 1998) ..... 8

*Gerstein v. Pugh*,
420 U.S. 103 (1975) ..... *passim*

*Gregg v. Georgia*,
428 U.S. 153 (1976) ..... 27

*Heck v. Humphrey*,
512 U.S. 477 (1994) ..... 7, 9, 29, 35

*Hernandez-Cuevas v. Taylor*,
723 F.3d 91 (1st Cir. 2013) ..... 8, 10

*Herring v. United States*,
555 U.S. 135 (2009) ..... 18

*Johnson v. United States*,
333 U.S. 10 (1948) ..... 24

*Kalina v. Fletcher*,
522 U.S. 118 (1997) ..... 7, 19

*Lambert v. Williams*,
223 F.3d 257 (4th Cir. 2000) ..... 8

*Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*,
507 U.S. 163 (1993) ..... 2

*Llovet v. City of Chicago*,
761 F.3d 759 (7th Cir. 2014) ..... *passim*

*Maine v. Thiboutot*,
448 U.S. 1 (1980) ..... 31

*Malley v. Briggs*,
475 U.S. 335 (1986) ..... *passim*

*Marks v. United States*,
430 U.S. 188 (1977) ..... 27

*Mathews v. Eldridge*,
424 U.S. 319 (1976) ..... 30, 31

*Medina v. California*,
505 U.S. 437 (1992) .....30

*Memphis Cmty. Sch. Dist. v. Stachura*,
477 U.S. 299 (1986) .....33

*Michigan v. Chesternut*,
486 U.S. 567 (1988) .....21

*Mireles v. Waco*,
502 U.S. 9 (1991) (per curiam).....23

*Monroe v. Pape*,
365 U.S. 167 (1961) .....23, 32

*Moody v. Pender*, 3 N.C. (2 Hayw.)
29 (1798) .....7

*Murphy v. Lynn*,
118 F.3d 938 (2d Cir. 1997).....8

*Newsome v. McCabe*,
256 F.3d 747 (7th Cir. 2001) .....10, 26, 27, 31

*Nichols v. United States*,
511 U.S. 738 (1994) .....27

*Novitsky v. City of Aurora*,
491 F.3d 1244 (10th Cir. 2007) .....8

*Parish v. City of Chicago*,
594 F.3d 551 (7th Cir. 2009) .....31

*Parratt v. Taylor*,
451 U.S. 527 (1981) .....32, 33

*Patterson v. New York*,
432 U.S. 197 (1977) .....30

*Pitt v. District of Columbia*,
491 F.3d 494 (D.C. Cir. 2007) .....8

*Richardson v. McKnight*,
521 U.S. 399 (1997) ..... 34

*Rodriguez v. United States*,
135 S. Ct. 1609 (2015) ..... 22

*Seminole Tribe v. Florida*,
517 U.S. 44 (1996) ..... 18

*Soldal v. Cook County*,
506 U.S. 56 (1992) ..... 11, 26

*Sykes v. Anderson*,
625 F.3d 294 (6th Cir. 2010) ..... 8, 13

*Tyler v. Defrees*,
78 U.S. (11 Wall.) 331 (1870) ..... 22

*United States v. Calandra*,
414 U.S. 338 (1974) ..... 24

*United States v. James Daniel Good Real Prop.*, 510 U.S. 43 (1993) ..... *passim*

*United States v. Leon*,
468 U.S. 897 (1984) ..... 16

*United States v. Mendenhall*,
446 U.S. 544 (1980) ..... 22, 23

*Wallace v. Kato*,
549 U.S. 384 (2007) ..... *passim*

*White v. Frank*,
855 F.2d 956 (2d Cir. 1988) ..... 24

*Whiting v. Traylor*,
85 F.3d 581 (11th Cir. 1996) ..... 8

*Wyatt v. Cole*,
504 U.S. 158 (1992) ..... 35

*Zinermon v. Burch*,
494 U.S. 113 (1990) .....32, 33

**Statutes**

28 U.S.C. § 1254(1) .....1

42 U.S.C. § 1983.....*passim*

**Rules and Regulations**

N.M. Dist. Ct. R. Crim. P 5-301 .....20

**Other Authorities**

Crime & Justice Institute, *The Cost of Pretrial Justice*.....34

Florida Practice, *Criminal Practice & Procedure* § 9:6 (2016).....20

Keeton, W. Page et al., *Prosser and Keeton on the Law of Torts* (5th ed. 1984).....36

Note, *Groundless Litigation and the Malicious Prosecution Debate*, 88 Yale L.J. 1218 (1979).....35

Office of Will County Public Defender, *The Court Process* .....4, 20

Scalia, Eugene, Comment, *Police Witness Immunity Under § 1983*, 56 U. Chi. L. Rev. 1433 (1989).....7

The Laws of King Edgar *in Ancient Laws & Institutes of England* (Benjamin Thorpe ed., 1840) .....35

## BRIEF FOR PETITIONER

Petitioner Elijah Manuel respectfully requests that this Court reverse the judgment of the United States Court of Appeals for the Seventh Circuit.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (J.A. 100) is unpublished but can be found at 590 Fed. Appx. 641. The opinion of the District Court for the Northern District of Illinois (J.A. 97) is unpublished but can be found at 2014 WL 551626.

## JURISDICTION

The judgment of the court of appeals was entered on January 28, 2015. Petitioner filed a timely petition for a writ of certiorari on April 27, 2015, which this Court granted on January 15, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

42 U.S.C. § 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . subjects, or causes to be subjected, any citizen of the United States or other person within

the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . "

## STATEMENT OF THE CASE

Police officers from the City of Joliet arrested petitioner Elijah Manuel and caused him to be detained for forty-eight days in county jail, all the while knowing there was no probable cause—indeed, no basis whatsoever—to believe he had committed any crime. This case concerns whether the Fourth Amendment supplies Manuel a cause of action under 42 U.S.C. § 1983 based on the weeks of that detention that followed the officers' misrepresentations to a judicial officer that he had committed a felony.

### A. Factual Background[1]

Shortly after midnight on March 18, 2011, petitioner Elijah Manuel and his brother were driving in Manuel's car through Joliet, Illinois. Manuel was asleep in the passenger seat while his brother was driving. J.A. 30, 101.

After allegedly observing Manuel's car fail to signal a turn, Joliet police officers Terrence Gruber and Thomas Conroy, who had a history of harassing the brothers, pulled the car over. J.A. 73, 101. The

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[1] Because this case comes to the Court on appeal from a decision granting a motion to dismiss, this Court "must accept as true all the factual allegations in the complaint." *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993).

officers approached the car and, without warning, opened the passenger door, forced Manuel from the car, and thrust him face-first to the ground. *Id.* 101.[2] Officer Gruber handcuffed Manuel and taunted him: "You remember me, street punk? Now I got you, you fucking nigger." *Id.* 32, 63. As Manuel remained handcuffed on the ground, Officers Gruber and Conroy punched and kicked him. *Id.* 32, 101. At some point, at least three other officers arrived on the scene. *Id.* 64-69. They stood by and watched Officers Gruber and Conroy beat Manuel until he suffered a black eye, facial abrasions, and other injuries that caused intense pain and soreness that persisted for weeks. *Id.* 32.

The officers also searched Manuel. They found nothing except a vitamin bottle in his pocket with pills inside. The officers conducted a field test on the pills for the presence of a controlled substance. J.A. 101. The pills tested negative, and Manuel protested his innocence of any wrongdoing. *Id.* 28-29, 101. Nevertheless, the officers arrested Manuel and brought him to the police station. *Id.* 101.

At the station, a law enforcement evidence technician tested the pills again. The result again came back negative; there was no controlled substance. J.A. 34, 50. The technician, however, lied in his report, stating that one of the pills was "found

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[2] The officers would later claim that as they approached the car, they saw someone inside move toward the center console. J.A. 95. They added that they smelled "the odor of burnt cannabis." *Id.* 101. But even though they later tore apart Manuel's car, *id.* 36, and thoroughly searched him, they never produced any evidence of marijuana, *id.* 30.

to be positive for the probable presence of ecstasy." *Id.* 92.

Later that morning, another officer who had been at the scene of the arrest executed a criminal complaint on oath in the county court of Will County, Illinois. J.A. 52-53. Based on the police technician's report, as well as Officer Gruber's arrest report claiming that "[f]rom [his] training and experience, [he] knew the pills to be ecstasy," *id.* 91, the complaint charged Manuel with felony possession of a controlled substance, *id.* 52.

In Will County, persons arrested without a warrant and charged with state law offenses are typically brought before a county court judge within forty-eight hours. Office of Will County Public Defender, *The Court Process*, http://bit.ly/1U7TFjq (last visited May 1, 2016). The court typically appoints counsel at this "first appearance." *Id.* As the Fourth Amendment requires, the judge also "determine[s], based upon the synopsis of the police report, if there was sufficient probable cause for an arrest." *Id.*; *see Gerstein v. Pugh*, 420 U.S. 103 (1975). Defense counsel may dispute whether the allegations in the report, on their face, rise to the level of probable cause. But counsel may not challenge the truth of any of the allegations or otherwise try to dispute them.

Consistent with these protocols, the state-court docket sheet (not yet part of the record in this case) shows that on the day of his arrest, Manuel appeared

before a judge on the drug charge.[3] The court accepted and recited the charge and appointed a public defender to represent Manuel. Defense counsel acknowledged receipt of the complaint and waived the opportunity to dispute that the officers had supplied allegations to the court that, on their face, satisfied *Gerstein*'s probable cause requirement. The court then set bond and remanded Manuel to the county jail.

About two weeks later, in a proceeding that lasted only a few minutes, a Will County prosecutor presented the charges to a grand jury. J.A. 95-96. Officer Gruber repeated his allegation from the police report that the pills he seized from Manuel had tested positive in the field for ecstasy. *Id.* Solely on the basis of Gruber's false statement, the grand jury indicted Manuel. *Id.* 54-55.

On April 1, 2011, an Illinois State Police Laboratory test confirmed that the pills were neither ecstasy nor any other controlled substance. J.A. 51. There is no indication in the documents Manuel has thus far obtained that the Joliet police disclosed this report to the prosecutor or anyone else.

One week later, Manuel was arraigned on the basis of the grand jury indictment. Apparently still unaware of the lab report confirming that the pills contained no controlled substance, the prosecution

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[3] This docket sheet is publicly available and can be found at the Will County Circuit Court website by searching for case number 11CF00546 and selecting the "Events" tab, available at https://ipublic.il12th.org/SearchPrompt.php (last visited May 1, 2016).

did not mention it. So Manuel languished in county jail for almost another month. J.A. 101.

Finally, after receiving a request from Manuel's public defender to turn over a copy of any test results regarding the pills, the prosecution obtained the state lab report and moved to dismiss the charges. J.A. 34, 101. The county court accepted the State's motion and dismissed the charges. *Id.* Manuel was released the next day, May 5, 2011—forty-seven days after his first court appearance. *Id.*

During and after his detention, Manuel suffered extreme emotional distress, depression, and the anxiety that arises from any long-term incarceration. J.A. 38, 42. He could neither work nor complete his college coursework, but he still owed tuition for the classes he had missed. *Id.* 101-02. With no income, he had to default on his student loan debt and other bills, ultimately losing his apartment and incurring damage to his credit score and reputation. *Id.* 36.

### B. Procedural and Legal Background

On April 22, 2013, Manuel filed a *pro se* complaint under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Illinois. J.A. 25-47 Manuel sued eight named officers and additional unknown officers involved in his arrest and detention. He also named the City of Joliet as a defendant, alleging that the officers' unlawful actions were part of a municipal pattern and practice. He alleged multiple constitutional violations, including the claim at issue here: a "malicious prosecution" claim arising from his prolonged detention after the police falsely represented to the county court judge that there was

probable cause to believe that Manuel had committed a crime. *Id.* 37-39.

1. By way of brief background, malicious prosecution claims permit damages for confinement pursuant to wrongful institution of "legal process"—that is, the process by which law enforcement represents in a legal proceeding that probable cause exists to believe someone has committed a crime. *Wallace v. Kato*, 549 U.S. 384, 390 (2007); *accord Heck v. Humphrey*, 512 U.S. 477, 484 (1994). Such claims are "entirely distinct" from any claims for illegal warrantless arrest, which are limited to the period *before* an arrestee is held pursuant to legal process. *Wallace*, 549 U.S. at 389-90.

For centuries before the Founding, the common-law version of the malicious prosecution tort provided an action against any "complaining witnesses" who falsely and maliciously made accusations to a magistrate, judge, or law enforcement officer. *Kalina v. Fletcher*, 522 U.S. 118, 132-34 (1997) (Scalia, J., concurring); *see generally* Eugene Scalia, Comment, *Police Witness Immunity Under § 1983*, 56 U. Chi. L. Rev. 1433, 1441-42 (1989) (describing early history of common-law malicious prosecution tort). American courts in the early Republic likewise recognized malicious prosecution tort claims. *See, e.g.*, *Moody v. Pender*, 3 N.C. (2 Hayw.) 29 (1798); *see also Briscoe v. LaHue*, 460 U.S. 325, 351 n.9 (1983) (Marshall, J., dissenting) (collecting cases).

In modern times, complaining witnesses in criminal cases are commonly police officers or other state actors. Accordingly, malicious prosecution claims are now often brought under 42 U.S.C. § 1983, which provides individuals a cause of action against

state and local government officials who deprive them of "any rights, privileges, or immunities secured by the Constitution and laws."

In *Albright v. Oliver*, 510 U.S. 266 (1994), seven Justices explained in various opinions that when someone who has been detained without probable cause brings a malicious prosecution claim, the Fourth Amendment provides a basis for the claim. *See id.* at 271 (plurality opinion); *id.* at 290 (Souter, J., concurring in the judgment); *id.* at 307-08 (Stevens, J., joined by Blackmun, J., dissenting). Justice Kennedy, joined by Justice Thomas, wrote separately to explore the viability of Albright's claim as a matter of procedural due process, but they did not disagree that the Fourth Amendment could also have applied. *Id.* at 281 (opinion concurring in the judgment). Consequently, ten federal courts of appeals have held that the Fourth Amendment provides a legitimate constitutional basis under these circumstances for malicious prosecution claims.[4]

2. After reviewing Manuel's *pro se* complaint, the district court appointed counsel, who filed an

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[4] *See Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 99-100 (1st Cir. 2013); *Murphy v. Lynn*, 118 F.3d 938, 944 (2d Cir. 1997); *Gallo v. City of Philadelphia*, 161 F.3d 217, 222 (3d Cir. 1998); *Lambert v. Williams*, 223 F.3d 257, 261-62 (4th Cir. 2000); *Castellano v. Fragozo*, 352 F.3d 939, 953-54 (5th Cir. 2003); *Sykes v. Anderson*, 625 F.3d 294, 309 (6th Cir. 2010); *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1126-27 (9th Cir. 2002); *Novitsky v. City of Aurora*, 491 F.3d 1244, 1257-58 (10th Cir. 2007); *Whiting v. Traylor*, 85 F.3d 581, 583-84 (11th Cir. 1996); *Pitt v. District of Columbia*, 491 F.3d 494, 511 (D.C. Cir. 2007).

amended complaint. Like the original complaint, the amended complaint advanced numerous civil rights claims, including a malicious prosecution claim under Section 1983 based on the violation of Manuel's Fourth Amendment rights. J.A. 79, 102.

Respondents filed a motion to dismiss, arguing that all of Manuel's claims were time-barred under the applicable two-year limitations period. According to respondents, all of Manuel's claims accrued on the day of his arrest, which was more than two years before he filed his complaint. J.A. 97-98. The district court agreed, except with respect to his malicious prosecution claim. Malicious prosecution claims accrue when "criminal proceedings have terminated in the plaintiff's favor." *Heck*, 512 U.S. at 489; *see also Albright*, 510 U.S. at 280 (Ginsburg, J., concurring) (Fourth Amendment malicious prosecution claim accrues "upon dismissal of the criminal charges" against the detainee). Manuel had filed his complaint within two years of the dismissal of the drug charge, so his malicious prosecution claim was timely. J.A. 98.

The district court nevertheless dismissed Manuel's malicious prosecution claim. Even though the claim would have been valid in the vast majority of circuits, the district court deemed itself bound by Seventh Circuit precedent dictating that malicious prosecution claims may never be brought under the Fourth Amendment. J.A. 99.

3. Manuel appealed the dismissal of his malicious prosecution claim to the Seventh Circuit, contending that his claim was cognizable under the Fourth Amendment.

Like the district court, the Seventh Circuit panel deemed itself bound by circuit precedent to disagree. Under circuit law derived from an interpretation of Justice Kennedy's concurrence in *Albright*, the panel explained, claims of malicious prosecution alleging improper detention following the commencement of legal process "are founded on the right to due process, not the Fourth Amendment." J.A. 102. And circuit law, the panel continued, forecloses such procedural due process claims "if, as here, state law provides a similar cause of action." *Id.*

The court of appeals conceded that "there is now broad consensus among the circuits that the Fourth Amendment right to be free from unreasonable seizure but upon probable cause extends through the pretrial period" and thus supports claims for malicious prosecution. J.A. 104 (quoting *Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 98-99 (1st Cir. 2013)). The court of appeals further acknowledged that "Manuel's counsel advanced a strong argument" for joining those circuits. *Id.* 104. Yet in light of the contrary Seventh Circuit precedent, the panel concluded that "Manuel's argument [was] better left for the Supreme Court." *Id.* (citing *Newsome v. McCabe*, 256 F.3d 747 (7th Cir. 2001); *Llovet v. City of Chicago*, 761 F.3d 759 (7th Cir. 2014)).

4. This Court granted certiorari. 136 S. Ct. 890 (2016).

## SUMMARY OF ARGUMENT

Malicious prosecution claims for pretrial detention without probable cause after the initiation of legal process may be brought under the Fourth Amendment.

I. Time and again, this Court has held that the Fourth Amendment governs the detention of suspects pending trial. Accordingly, *Albright v. Oliver*, 510 U.S. 266 (1994), instructs that malicious prosecution claims arising from wrongful pretrial detention should be analyzed under the Fourth Amendment.

Such analysis reveals that the Fourth Amendment prohibits pretrial detention pursuant to legal process initiated without probable cause. When law enforcement officers initiate legal process by seeking an arrest warrant, they violate the Fourth Amendment if they cause someone to be detained without probable cause. *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). The procedures and perils in probable cause determinations that, as here, follow warrantless arrests are "the same" as in the pre-arrest setting. *Gerstein v. Pugh*, 420 U.S. 103, 120 (1975). Consequently, law enforcement officers also violate the Fourth Amendment when they cause someone to be detained without probable cause pursuant to an initiation of legal process that occurs after arrest. Indeed, holding that the Fourth Amendment applies only when legal process *precedes* arrest would invert this Court's established preference for pre-arrest probable cause determinations by incentivizing officers to conduct warrantless arrests.

II. The Due Process Clause is irrelevant to Manuel's malicious prosecution claim. This Court need not choose among potential constitutional sources of the claim, as "[c]ertain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands." *Soldal v. Cook County*, 506 U.S. 56, 70 (1992).

But if this Court needs to decide whether the Fourth Amendment or Due Process Clause trumps here, the Fourth Amendment must prevail. In *Albright*, seven Justices (five of whom agreed in the judgment) concluded that malicious prosecution claims arising from unlawful pretrial detentions should be judged under the Fourth Amendment. Justices Kennedy and Thomas did not undercut that proposition. Rather, these Justices merely contended that even where people are seized, they should also be able to base malicious prosecution claims upon "interests other than the interest in freedom from physical restraint." *Albright*, 510 U.S. at 283 (Kennedy, J., concurring in the judgment).

Requiring claims like Manuel's to be cast as due process claims would also raise administrative uncertainties. Procedural due process turns on flexible, generalized standards that dictate no predictable outcomes. For that reason, this Court in *Gerstein* rejected importing the requirements of procedural due process into "the detention of suspects pending trial." 420 U.S. at 125 n.27. In the particular context of malicious prosecution claims as well, it is far easier for courts to follow the Fourth Amendment's settled requirements.

III. Because Manuel has alleged a violation of his Fourth Amendment rights, he can bring his claim under Section 1983. The availability of a state law remedy is irrelevant when a Section 1983 claim is anchored in the Fourth Amendment. Furthermore, allowing claims such as Manuel's comports with the common law and vindicates the core purposes of Section 1983—compensating victims of constitutional torts and deterring constitutional violations.

## ARGUMENT

### I. The Fourth Amendment Governs Malicious Prosecution Claims Involving Pretrial Detentions Without Probable Cause

Manuel alleges that he suffered "unlawful detention" arising from the "wrongful institution of legal process." *Wallace v. Kato*, 549 U.S. 384, 390 (2007) (emphasis omitted). In particular, Manuel claims that respondent police officers initiated criminal proceedings against him, resulting in his prolonged detention, even though they knew they lacked probable cause to believe that he had committed a crime.

While this Court and others have referred to claims like Manuel's as "malicious prosecution," *Wallace*, 549 U.S. at 390, some courts have suggested that "a better name" for such a claim "might be unreasonable prosecutorial seizure." *Sykes v. Anderson*, 625 F.3d 294, 310 (6th Cir. 2010) (internal quotation marks and citation omitted); *see also Castellano v. Fragozo*, 352 F.3d 939, 953-54 (5th Cir. 2003) ("malicious prosecution" label invites unnecessary confusion). After all, the gravamen of the claim is unlawful detention, not the mere filing of baseless charges. Regardless of terminology, this claim (A) should be analyzed under the Fourth Amendment and (B) alleges a violation of that constitutional guarantee.

### A. Claims Grounded in Pretrial Detention Without Probable Cause Should Be Analyzed Under the Fourth Amendment

Over forty years ago, this Court instructed that the Fourth Amendment supplies the basis for analyzing allegedly unconstitutional "detention[s] of suspects pending trial." *Gerstein v. Pugh*, 420 U.S. 103, 125 n.27 (1975). Ever since, this Court has consistently reaffirmed that the "detention of criminal suspects" is "governed by the provisions of the Fourth Amendment." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 50 (1993); *see also Albright v. Oliver*, 510 U.S. 266, 274 (1994) (plurality opinion) ("The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it.").

In fact, this Court in *Albright* deemed the Fourth Amendment to be the proper constitutional footing for analyzing a malicious prosecution claim. In that case, plaintiff Albright was arrested pursuant to a warrant on suspicion of selling a substance that looked like an illegal drug. After posting bond, Albright was released on the condition that he not leave the state without permission. The trial court eventually dismissed the charges against him "on the ground that the charge did not state an offense under Illinois law." *Albright*, 510 U.S. at 268-69 (plurality opinion).

Albright sued the arresting officer and others under Section 1983. Because he was never incarcerated, "Albright may have feared that courts would narrowly define the Fourth Amendment's key term 'seizure' so as to deny full scope to his claim."

*Albright*, 510 U.S. at 277 (Ginsburg, J., concurring). So instead of invoking the Fourth Amendment, Albright alleged that the police violated his substantive due process rights by initiating a criminal prosecution against him without probable cause to believe he had committed any crime. *Id.* at 268-69 (plurality opinion).

The defendants did "not argue that the Civil Rights Act fail[ed] to provide a remedy for the conduct complained of." Resp. Br. 9, *Albright v. Oliver*, 510 U.S. 266 (1994) (No. 92-833). Indeed, they suggested that Albright had a "plausible fourth amendment claim based upon an unreasonable seizure" arising out of his arrest pursuant to legal process, such that Albright should have grounded his claim on that basis. *Id.* 9, 13. What Albright could not do, the defendants argued, was bring a substantive due process claim grounded in "the less tangible impact on liberty" associated with the mere "filing of charges." *Id.* 5-8, 13.

In a splintered decision, the Court agreed with the defendants, holding that Albright could not bring his claim under the rubric of substantive due process. *Albright*, 510 U.S. at 271 (plurality opinion); *id.* at 281, 283 (Kennedy, J., concurring in the judgment); *id.* at 286 (Souter, J., concurring in the judgment). And although Albright had not separately advanced a Fourth Amendment violation, seven Justices (five of whom agreed with the judgment) concluded that the Fourth Amendment provided a proper basis for analyzing malicious prosecution claims involving "pretrial deprivations of liberty." *Id.* at 274 (plurality opinion); *see also id.* at 290 (Souter, J., concurring in the judgment); *id.* at 307 (Stevens, J., joined by

Blackmun, J., dissenting). Indeed, because Albright was unquestionably "seized" when he surrendered to the arrest warrant and the Fourth Amendment regulates "restraint[s] on liberty following an arrest," the plurality explained, "it [was] the Fourth Amendment . . under which petitioner Albright's claim *must* be judged." *Id.* at 271 (emphasis added).

Consistent with this directive, we now apply Fourth Amendment principles to Manuel's claim.

### B. The Fourth Amendment Prohibits Pretrial Detention Without Probable Cause After Legal Process Has Commenced

To justify any "extended" detention related to potential or actual criminal charges, the Fourth Amendment requires law enforcement to demonstrate to a judicial officer that probable cause exists to believe the suspect committed a crime. *Gerstein*, 420 U.S. at 114. This demonstration may occur before or after arrest. *Id.* Either way, law enforcement officers violate the Fourth Amendment's prohibition against unreasonable seizures when their overzealousness or mendacity causes someone to be detained without probable cause.

1. Law enforcement officers can satisfy the Fourth Amendment's probable cause requirement for extended pretrial detention in one of two ways.

First, officers may secure an arrest warrant before arresting a suspect. In this setting, "[i]t is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the

requirements of the Fourth Amendment." *United States v. Leon*, 468 U.S. 897, 921 (1984).

Second, law enforcement officers sometimes need to arrest someone without first seeking a warrant. In this scenario, "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime." *Gerstein*, 420 U.S. at 113-14. But if that detention is to continue for longer than forty-eight hours, the Fourth Amendment requires law enforcement to secure a "judicial determination" of probable cause. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991); *see also Gerstein*, 420 U.S. at 125 (post-arrest determinations of probable cause must occur "promptly after arrest").

Regardless of whether demonstrating probable cause to a judicial officer occurs before or after arrest, the demonstration constitutes legal process. *See Wallace*, 549 U.S. at 389 (referring to an arrest warrant as "legal process"); *id.* (legal process commences when suspect "is bound over by a magistrate"); *see also Burns v. Reed*, 500 U.S. 478, 492 (1991) (probable cause hearing is part of "the judicial phase of the criminal process" (citation omitted)).

2. When legal process occurs before an arrest, police officers violate the Fourth Amendment if they cause someone to suffer pretrial detention without probable cause. For example, this Court has long held that if a police officer obtains a warrant based on "a false statement, [made] knowingly and intentionally, or with reckless disregard for the truth," the execution of that warrant violates the Fourth Amendment. *Franks v. Delaware*, 438 U.S.

154, 155-56 (1978); *see also Herring v. United States*, 555 U.S. 135, 145 (2009) (confirming this rule applies in the context of arrest warrants).

*Malley v. Briggs*, 475 U.S. 335 (1986), is particularly on point. There, a police officer submitted affidavits and a judge issued arrest warrants for the plaintiffs on drug charges. *Id.* at 338. Police arrested the plaintiffs, but the charges were later dismissed as unfounded. *Id.* When the plaintiffs filed a Section 1983 suit claiming that their post-arrest pretrial detention in the absence of probable cause violated the Fourth Amendment, the arresting officer responded that the detention was *per se* reasonable because "he [wa]s entitled to rely on the judgment of a judicial officer in finding that probable cause exist[ed]." *Id.* at 345. This Court disagreed, and held that an officer may be held liable under Section 1983 when it is "obvious that no reasonably competent officer would have concluded that a warrant should issue." *Id.* at 341, 345.

This Court in *Malley* focused principally on the circumstances under which police officers are entitled to immunity. But "[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which [this Court is] bound." *Seminole Tribe v. Florida*, 517 U.S. 44, 67 (1996). And in holding that the officer in *Malley* was not necessarily entitled to immunity, this Court also ruled that the plaintiffs' allegations, if true, stated a Fourth Amendment violation. In particular, drawing on Fourth Amendment principles, this Court held that an officer should be held liable if "a reasonably well-trained officer . . . would have known that his affidavit failed

to establish probable cause and that he should not have applied for the warrant." *Malley*, 475 U.S. at 345.

*Malley*, in other words, announced not only a qualified immunity principle but a Fourth Amendment rule as well: The Fourth Amendment is violated when someone is detained pursuant to an arrest warrant issued on less than probable cause. Thus, as Justice Scalia later explained, *Malley* enables "malicious prosecution" claims to be brought against officers who cause illegal detentions pursuant to arrest warrants not supported by probable cause. *Kalina v. Fletcher*, 522 U.S. 118, 133-34 (1997) (Scalia, J., concurring). If the officers here had secured an arrest warrant for Manuel based on the same representations they made after arresting him, Manuel's subsequent detention until charges were dropped would undoubtedly have violated the Fourth Amendment.

Holding officers answerable to the Fourth Amendment when they wrongfully obtain and execute an arrest warrant makes perfect sense. Warrant applications are conducted on an *ex parte* basis. "The magistrate has no acquaintance with the information that may contradict the good faith and reasonable basis of the affiant's allegations." *Franks*, 438 U.S. at 169. Moreover, given severe "docket pressures," *Malley*, 475 U.S. at 346, magistrates are rarely able "to make an extended independent examination of the [police officer] affiant or other witnesses," *Franks*, 438 U.S. at 169. Magistrates thus have no choice but to depend on the care, veracity, and integrity of police officers. *Id.* at 169-70. If an officer's conduct falls short and probable

cause is lacking, the detention violates the Fourth Amendment. It does not matter that the magistrate accepted the warrant application.

3. When, as here, legal process occurs after an arrest, the Fourth Amendment is likewise violated if officers cause someone to suffer pretrial detention without probable cause.

In *Gerstein*, this Court explained that the procedures required for a post-arrest demonstration of probable cause are "the same" as those required for the issuance of an arrest warrant. *Gerstein*, 420 U.S. at 120; *see also id.* at 120 n.21 ("the standards are identical"). Just like warrant application proceedings, so-called *Gerstein* hearings need not provide significant procedural or "adversary safeguards" to the accused. *Id.* at 120. For instance, this case comes from Will County, Illinois, where a magistrate judge at a *Gerstein* hearing determines probable cause "based upon the synopsis of the police report." Office of Will County Public Defender, *The Court Process*, http://bit.ly/1U7TFjq (last visited May 1, 2016). Just as when law enforcement officers apply for an arrest warrant, the defendant has no opportunity to rebut police officers' allegations in support of probable cause. *Id.*[5]

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[5] In many other jurisdictions, the procedural requirements for *Gerstein* hearings are similarly minimal. For example, in New Mexico, "[t]he determination that there is probable cause shall be nonadversarial and may be held in the absence of the defendant and of counsel." N.M. Dist. Ct. R. Crim. P. 5-301. In Florida, "the Fourth Amendment requirement [is] satisfied by an informal nonadversarial judicial determination of probable cause. The defendant need not be provided counsel for

In light of this equivalence, judicial officers at *Gerstein* hearings are similarly dependent on—and detainees are equally at the mercy of—law enforcement officers as in the pre-arrest setting. Where, as here, officers mislead magistrates to sustain detentions without probable cause, the detentions thus violate the Fourth Amendment just as surely as when misrepresentations cause detentions under an unfounded arrest warrant. Put another way, a post-arrest initiation of legal process no more renders a detention without probable cause automatically reasonable than does a pre-arrest initiation of legal process.

Notwithstanding this analysis, the Seventh Circuit has suggested without citation that "once detention by reason of arrest turns into detention by reason of" a *Gerstein* hearing, the Fourth Amendment "falls out of the picture." *Llovet v. City of Chicago*, 761 F.3d 759, 763 (7th Cir. 2014). According to the Seventh Circuit, continuing to detain someone in jail following a judicial determination of probable cause is not a "seizure." *Id.*

To the extent the Seventh Circuit maintains that once some period of time elapses, pretrial incarceration following an arrest ceases to be a "seizure," this contention cannot be correct. It is well-established that a person is seized whenever "his freedom of movement is restrained" such that he feels

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purposes of the postarrest determination of probable cause. Indeed, the defendant need not even be present." 22 Fla. Prac., *Criminal Practice & Procedure* § 9:6 (2016).

"not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980).[6] Therefore, anyone who is arrested and put in jail is seized from arrest until release; the Seventh Circuit is just wrong to claim there is a difference in this context "between seizing a person and not letting him go," *Llovet*, 761 F.3d at 764.

Indeed, if detention in county jail at some point ceased to be a "seizure," the perverse result would be that whenever the state held a criminal suspect in custody for long enough, the Fourth Amendment would eventually cease to govern the detention. But *Gerstein* and *McLaughlin* hold the opposite: the longer the state detains someone without a hearing, the more likely the Fourth Amendment is violated. *McLaughlin*, 500 U.S. at 57; *see also Rodriguez v. United States*, 135 S. Ct. 1609, 1612 (2015) (Fourth Amendment prohibits continued detention of motorists at traffic stops after the traffic matter has been resolved).

To the extent the Seventh Circuit maintains instead that a detention ceases to be a seizure once a magistrate condones it, *see Llovet*, 761 F.3d at 763, that cannot be right either. A post-arrest demonstration of probable cause enables the *continuation* of the seizure, not its *termination*. That is, a probable cause finding does not change the fact that a suspect's freedom of movement remains

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[6] Only four Justices signed the lead opinion in *Mendenhall*, but "[t]he Court has since embraced this test." *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988).

restrained and he is still "not free to leave," *Mendenhall*, 446 U.S. at 554.[7]

To be sure, in some cases a person's continued unreasonable seizure may be attributable to a magistrate's error, rather than to wrongdoing by any law enforcement officer. In those cases, the law enforcement officer might not be the appropriate defendant, *see Wallace*, 549 U.S. at 391, and the magistrate is likely absolutely immune from Section 1983 liability, *see Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam) (describing rule of absolute immunity for judicial actions). But the question of who the proper defendant might be in any given case is one of causation; it has nothing to do with whether the Fourth Amendment is violated. *See Malley*, 475 U.S. at 344 n.7.

In any event, there is no such causation difficulty here. When an officer's role in "effectuating and maintaining a seizure" at the probable cause hearing causes a person's continued detention, the officer may be found liable under the Fourth Amendment. *Albright*, 510 U.S. at 279 & n.5 (Ginsburg, J., concurring); *see also Monroe v. Pape*, 365 U.S. 167,

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[7] The common law—from which Fourth Amendment "standards and procedures" are "derived," *Gerstein*, 420 U.S. at 111—reinforces the conclusion that legal process does not terminate a seizure. *See Tyler v. Defrees*, 78 U.S. (11 Wall.) 331, 347-49 (1870) (explaining that a court's issuance of a warrant affirming the validity of a prior warrantless seizure of property under Confiscation Acts would not terminate the seizure); *see also California v. Hodari D.*, 499 U.S. 621, 624 (1991) (looking to case law under Confiscation Acts to determine the meaning of "seizure" under the Fourth Amendment).

187 (1961) (Section 1983 should be implemented according to "the background of tort liability that makes a man responsible for the natural consequences of his actions."). Because the officers here provided "misleading" representations to support Manuel's detention, *see supra* at 4-5, that causation standard is easily met. *See Albright*, 510 U.S. at 279 (Ginsburg, J., concurring).[8]

4. Suspending the Fourth Amendment when legal process follows—but not when it precedes—an arrest would contravene this Court's well-established preference for pre-seizure assessments of probable cause. As noted earlier, circumstances sometimes require officers to make probable cause determinations in the field. But police officers in this situation may be overzealous in their judgments of what constitutes probable cause because they are "engaged in the often competitive enterprise of ferreting out crime." *Gerstein*, 420 U.S. at 113 (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)). So "whenever possible," this Court requires

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[8] The same causation analysis applies to grand jury probable cause determinations, as occurred about midway through Manuel's detention. Like a *Gerstein* hearing, "[a] grand jury proceeding is not an adversary hearing Rather, it is an ex parte investigation to determine whether a crime has been committed and whether criminal proceedings should be instituted against any person." *United States v. Calandra*, 414 U.S. 338, 343-44 (1974). Accordingly, "[t]he intervening acts of a grand jury have never been enough" under the common law or the Fourth Amendment "to defeat an otherwise viable malicious prosecution claim" grounded in an officer's misrepresentations while initiating the prosecution. *White v. Frank*, 855 F.2d 956, 961-62 (2d Cir. 1988).

that "the existence of probable cause be decided by a neutral and detached magistrate" *before* any arrest occurs. *Id.* at 112; *see also Malley*, 475 U.S. at 353 (Powell, J., concurring in part and dissenting in part) ("The police, where they have reason to believe probable cause exists, should be encouraged to submit affidavits to judicial officers" to obtain warrants.).

Attaching the Fourth Amendment to pre-arrest probable cause determinations but not post-arrest probable cause determinations would invert this preferred structure. It would mean that officers could escape responsibility for causing unjustified seizures after warrantless arrests, while they would face liability for unjustified seizures pursuant to arrest warrants. This would perversely incentivize law enforcement officials to pursue warrantless arrests, rather than warrants, whenever possible.

Holding that the Fourth Amendment falls away immediately upon post-arrest probable cause demonstrations would also thwart the purpose of *Gerstein*. The whole point of that decision is to give people arrested without warrants the same basic "protection against unfounded invasions of liberty and privacy" that the Fourth Amendment extends to those arrested with warrants. *Gerstein*, 420 U.S. at 112. When people are arrested without warrants and then incarcerated for an extended period without probable cause, it is just as "essential" that the Fourth Amendment provide protection as when such detentions occur pursuant to warrants. *Id.* at 114.

## II. The Due Process Clause Is Irrelevant to Manuel's Malicious Prosecution Claim

Despite the Fourth Amendment's straightforward application here, the Seventh Circuit has reasoned—contrary to every other circuit to consider the question—that "once detention by reason of arrest turns into detention by reason of [legal process], . . . the detainee's claim that the detention is improper becomes [exclusively] a claim of malicious prosecution violative of due process." J.A. 104 (quoting *Llovet v. City of Chicago*, 761 F.3d 759, 763 (7th Cir. 2014)). This reasoning is mistaken.

1. "Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands." *Soldal v. Cook County*, 506 U.S. 56, 70 (1992). When this happens, "applicability of one constitutional amendment" does not "pre-empt[] the guarantees of another." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 49 (1993). Consequently, it is immaterial whether Manuel could have framed his malicious prosecution claim as a violation of procedural due process. He has invoked the Fourth Amendment, and the Fourth Amendment supports his cause of action.

2. If for some reason it were necessary to undertake a "pigeonhole analysis," *Bearden v. Georgia*, 461 U.S. 660, 666 (1983)—that is, to force Manuel's claim into a single constitutional provision—it would be improper to require the claim to be grounded in the Due Process Clause instead of the Fourth Amendment.

a. In *Albright v. Oliver*, 510 U.S. 266 (1994), seven Members of the Court (five of whom agreed with the judgment) endorsed the Fourth Amendment

as a basis for analyzing malicious prosecution claims. *See supra* at 8.

The Seventh Circuit has ignored those seven votes and instead focused exclusively on Justice Kennedy's opinion concurring in the judgment, in which Justice Thomas joined. *See Newsome v. McCabe*, 256 F.3d 747, 750-51 (7th Cir. 2001). Justice Kennedy would have held that malicious prosecution claims like Albright's—claims grounded solely in the interest in avoiding criminal charges—could sometimes proceed in federal court as procedural due process claims. *Albright*, 510 U.S. at 283-84.

Contrary to what the Seventh Circuit has assumed, Justice Kennedy's opinion is not "the effective holding of the Court," *Newsome*, 256 F.3d at 751. An opinion in the midst of a splintered Court controls when it "concur[s] in the judgment[] on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976)). But when there is no "lowest common denominator" among an array of opinions, it is "not useful to pursue the *Marks* inquiry to the utmost logical possibility." *Nichols v. United States*, 511 U.S. 738, 745-46 (1994). Such is the case with *Albright*. The plurality refused to allow Albright to frame his malicious prosecution claim as a violation of substantive due process. Justice Kennedy concluded that while some in Albright's situation could proceed as a matter of procedural due process, Albright could not. Meanwhile, Justice Souter agreed with the plurality that Albright suffered no substantive due process violation but was open to allowing other malicious prosecution claims

to proceed in that manner. *See Albright*, 510 U.S. at 291 (opinion concurring in the judgment). None of these opinions nests within another.

More importantly, Justice Kennedy's opinion did not address the type of malicious prosecution claim at issue here. Even though Albright had been seized pursuant to legal process (he had been arrested pursuant to a warrant), Justice Kennedy stressed that Albright grounded his malicious prosecution claim not on his seizure, but on "interests other than the interest in freedom from restraint." *Albright*, 510 U.S. at 283 (Kennedy, J., concurring in the judgment); *see also id.* at 271 (plurality opinion) (noting seizure); *supra* at 14-15 (describing Albright's claim in more detail).

Manuel, by contrast, grounds his claim squarely on his seizure—his seven-week confinement in county jail. Justice Kennedy had no need in *Albright* to address whether such a claim could be brought under the Fourth Amendment. To the extent he addressed the subject at all, he "agree[d] with the plurality that an allegation of arrest without probable cause must be analyzed under the Fourth Amendment." *Albright*, 510 U.S. at 281; *see also id.* at 282 (noting that *Gerstein* doctrine applies to any "extended pretrial detention"). Hence, Justice Kennedy's reasoning appears to support—and certainly does not undermine—Manuel's claim.

The same is true of *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Wallace v. Kato*, 549 U.S. 384 (2007), which the Seventh Circuit has read to "imply" that, following the initiation of legal process, "the Fourth Amendment falls out of the picture" in favor of procedural due process, *Llovet*, 761 F.3d at 763.

*Heck* and *Wallace* merely say that a judicial finding of probable cause marks the boundary between claims for "false imprisonment" and "malicious prosecution." *See Wallace*, 549 U.S. at 389-90; *Heck*, 512 U.S. at 484. They say nothing about whether such claims sound in the Fourth Amendment or the Due Process Clause. Indeed, this Court stated explicitly in *Wallace*: "We have never explored the contours of a Fourth Amendment malicious-prosecution suit under § 1983 . . and we do not do so here." 549 U.S. at 390 n.2 (citation omitted). Thus, neither case undermines Manuel's claim.

b. Requiring all malicious prosecution claims—even those grounded in illegal pretrial detentions—to be brought under the rubric of procedural due process would contravene not only *Albright* but other case law as well.

This Court in *Gerstein v. Pugh*, 420 U.S. 103 (1975), expressly rejected the argument that "traditional requirements of constitutional due process [should be] applicable in the context of pretrial detention," *id.* at 127 (Stewart, J., concurring). "The Fourth Amendment," this Court explained, "was tailored explicitly for the criminal justice system, and . . always has been thought to define the 'process that is due' for seizures of persons or property in criminal cases, including the detention of suspects pending trial." *Id.* at 125 n.27 (majority opinion). The dictates of procedural due process, therefore, are "inapposite" in the context of pretrial detention. *Id.*; *see also James Daniel Good Real Prop.*, 510 U.S. at 50.

And there is good reason to prefer the Fourth Amendment over the Due Process Clause in the

context of pretrial detention without probable cause: The Fourth Amendment's easily administrable requirements are preferable to any regime of "scarce and open-ended guideposts." *Albright*, 510 U.S. at 275 (plurality opinion) (quoting *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992)).

Much like the substantive due process framework the *Albright* plurality refused to apply, procedural due process "is not a technical conception with a fixed content." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961)). Rather, the standard formula for assessing procedural due process claims is a "flexible," multi-pronged balancing test. *See id.* at 334-45. Where the Court has deviated from this standard formula, it has asked whether a given procedure "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Medina v. California*, 505 U.S. 437, 446 (1992) (quoting *Patterson v. New York*, 432 U.S. 197, 202 (1977)).

Applying either of these standards to malicious prosecution claims grounded in pretrial detention without probable cause would threaten to generate the same uncertainties that applying substantive due process doctrine would have created. At least for this type of malicious prosecution claim, any choice between rooting such claims in the Fourth Amendment and the Due Process Clause should be resolved in favor of the Fourth Amendment.[9]

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[9] To the extent one can hazard a guess at how procedural due process might play out in this context, it could well require

## III. Manuel's Fourth Amendment Malicious Prosecution Claim Is Cognizable Under Section 1983

As a general rule, Section 1983 provides a cause of action in federal court against any person who, acting under color of state law, deprives another of "any right[] . . . secured by the Constitution." 42 U.S.C. § 1983; *see generally Maine v. Thiboutot*, 448 U.S. 1, 4-5 (1980) (collecting cases). As a matter of plain text, therefore, this statute provides Manuel a cause of action against respondents for their violation of his Fourth Amendment rights.

The Seventh Circuit has held, however, that "there is no malicious prosecution claim under federal law if, as here, state law provides a similar cause of action." J.A. 102 (quoting *Newsome v. McCabe*, 256 F.3d 747, 750-51 (7th Cir. 2001)). The court of appeals has also opined that, in any event, "there is nothing but confusion gained" by characterizing petitioner's claim for Section 1983 purposes as a "malicious prosecution" claim. *Id.* 103

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this Court to impose more burdensome procedures governing pretrial detention than the Fourth Amendment requires. In *Gerstein*, Justice Stewart maintained that the Fourth Amendment, as implemented by the majority, conferred "less procedural protection to an imprisoned human being" than procedural due process would dictate—indeed, less than the Fifth Amendment affords to the "garnishing [of] a commercial bank account" or the taking "custody of a refrigerator." *Gerstein*, 420 U.S. at 127 (Stewart, J., concurring) (citing cases); *see also James Daniel Good Real Prop.*, 510 U.S. at 52 (explaining that the *Mathews* test can be more stringent than the Fourth Amendment). The Court did not dispute that assertion. *See Gerstein*, 420 U.S. at 125 n.27.

(quoting *Parish v. City of Chicago*, 594 F.3d 551, 554 (7th Cir. 2009)).

Neither of these propositions is correct. The existence of state-law remedies is irrelevant here. And recognizing that Manuel's Fourth Amendment claim parallels a malicious prosecution claim confirms that his suit furthers the core purposes of Section 1983.

### A. Manuel's Claim May Proceed Under Section 1983 Regardless of Whether State Law Provides a Remedy for Malicious Prosecution

When a Section 1983 claim is grounded in the Fourth Amendment, any alternative state remedy is immaterial. In the Fourth Amendment context, as with nearly all constitutional rights, "[t]he federal remedy" under Section 1983 "is supplementary to the state remedy." *Monroe v. Pape*, 365 U.S. 167, 183 (1961); *see also Zinermon v. Burch*, 494 U.S. 113, 124-25 (1990) (plaintiffs "may bring a § 1983 action for an unlawful search and seizure . . . despite the fact that there are [state] common law remedies").

Therefore, as the Seventh Circuit conceded, the presence of a state-law remedy would be potentially relevant only if constitutional "claims of malicious prosecution are founded on the right to due process, not the Fourth Amendment"—the theory being that state law might satisfy the requirements of procedural due process under *Parratt v. Taylor*, 451 U.S. 527 (1981), by providing an adequate post-deprivation remedy. J.A. 102. As we have shown, however, Manuel's claim is properly grounded in the Fourth Amendment.

Even if the Seventh Circuit were correct that claims for wrongful detention pursuant to an erroneous probable cause determination had to be brought as procedural due process claims, it would not necessarily follow that *Parratt*'s "post-deprivation remedy" doctrine would apply in this setting. This Court has applied *Parratt* where post-deprivation remedies are "the only remedies the State could be expected to provide," but not where, as here, the state already provides pre-deprivation legal process. *Zinermon*, 494 U.S. at 128-30; *see also Castellano v. Fragozo*, 352 F.3d 939, 956 (5th Cir. 2003) (holding that *Parratt* does not apply in malicious prosecution cases).

### B. Allowing This Suit to Proceed Fulfills the Core Purposes of Section 1983

Allowing Fourth Amendment malicious prosecution claims to be brought under Section 1983 serves both of that statute's time-honored goals: compensating victims for violations of their civil rights and deterring state officers from such abuses.

1. Section 1983's "basic purpose" is to vindicate the fundamental tort-law objective "to compensate persons for injuries caused by the deprivation of rights." *Carey v. Piphus*, 435 U.S. 247, 254-55 (1978); *see also Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305-07 (1986) (Section 1983 "creates a species of tort liability in favor of persons who are deprived of rights, privileges, or immunities secured to them by the Constitution." (citation omitted)).

Allowing victims of wrongful pretrial detention to recover for their injuries furthers this goal. Individuals detained in this manner suffer myriad

harms. First and foremost, an individual subject to wrongful detention suffers a loss of freedom, including separation from family and society. In addition, a victim's "employment prospects may be diminished severely, he may suffer reputational harm, and he will experience the financial and emotional strain of preparing a defense." *Albright v. Oliver*, 510 U.S. 266, 278 (1994) (Ginsburg, J., concurring). In *Gerstein v. Pugh*, 420 U.S. 103 (1975), this Court likewise emphasized that "[t]he consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships." *Id.* at 114; *see also* Crime & Just. Inst., *The Cost of Pretrial Justice* 2, http://bit.ly/1oS8UzR (economic effects of even a relatively brief detention can be significant, jeopardizing the victim's ability to afford such basic necessities as housing, medical care, and child support) (last visited May 1, 2016).

This case illustrates these harms. Manuel suffered from depression, extreme emotional distress, and anxiety during his forty-eight days in jail. J.A. 38-39, 42. This confinement also disrupted his employment and his college coursework, forced him to default on his bills and student loans, and caused him to lose his apartment—all in addition to the administrative fees that Will County imposed to impound and hold his car while it held him in jail. *Id.* 36-37.

2. Section 1983 also "seeks 'to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights.'"

*Richardson v. McKnight*, 521 U.S. 399, 403 (1997) (emphasis omitted) (quoting *Wyatt v. Cole*, 504 U.S. 158, 161 (1992)). In *Malley v. Briggs*, 475 U.S. 335 (1986), for example, this Court explained that providing a cause of action under Section 1983 against officers for obtaining and executing an arrest warrant without probable cause is "desirable" because it deters premature arrests "which may injure the innocent." *Id.* at 343-44. Likewise here, confirming that individuals can sue under Section 1983 when they are wrongfully detained pursuant to post-arrest legal process will deter officers from lying or misrepresenting evidence to magistrates.

3. When crafting rules under Section 1983 to enable a person to be "compensated fairly for injuries caused by the violation of his legal rights," this Court has also looked to "the common law of torts." *Heck v. Humphrey*, 512 U.S. 477, 483 (1994) (quoting *Carey*, 435 U.S. at 257-58).

The tort of malicious prosecution has a rich history at common law—dating back to at least the tenth century. *See* Note, *Groundless Litigation and the Malicious Prosecution Debate*, 88 Yale L.J. 1218, 1221 (1979); *supra* at 7. So permitting such suits under Section 1983 breaks no new ground. Under Anglo-Saxon law, in fact, the tort carried an exceptionally severe penalty: "[H]e who shall accuse another wrongfully" was "liable in his tongue" if he failed to pay money damages. The Laws of King Edgar 4, *in Ancient Laws & Institutes of England* 113 (Benjamin Thorpe ed., 1840). In more recent centuries, the tort has permitted monetary compensation "for any arrest or imprisonment, including damages for discomfort or injury to [the

plaintiff's] health, or loss of time and deprivation of the society." *Heck*, 512 U.S. at 484 (quoting W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* 888 (5th ed. 1984)).

Permitting Fourth Amendment claims such as Manuel's to proceed would uphold the longstanding principle that victims of malicious prosecution are entitled to a damages remedy. It would enable monetary recoveries when officers cause individuals to be detained pursuant to legal process in the absence of probable cause and the officers' actions are so far outside the bounds of permissibility as to foreclose a qualified immunity defense. This remedy is the least our legal system should provide for innocent people who have been so victimized.

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

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